

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

RALPH STEGALL,

Petitioner,

v.

Civil No. 2:12-CV-12415

HONORABLE ARTHUR J. TARNOW

UNITED STATES DISTRICT JUDGE

SHANE JACKSON,

Respondent,

OPINION AND ORDER: (1) GRANTING MOTION TO LIFT THE STAY OF PROCEEDINGS, (2) AMENDING CAPTION, (3) GRANTING THE MOTION TO AMEND PETITION FOR WRIT OF HABEAS CORPUS, (4) DIRECTING THAT THE ORIGINAL AND THE AMENDED PETITIONS (Dkts. # 1, # 16) BE SERVED UPON THE RESPONDENT AND THE MICHIGAN ATTORNEY GENERAL, AND (5) DIRECTING RESPONDENT TO FILE AN ANSWER AND THE RULE 5 MATERIALS IN THIS CASE

Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, which was held in abeyance to permit Petitioner to return to the state courts to exhaust his claim.

Petitioner filed a motion to lift the stay of proceedings. Petitioner also filed an amended habeas petition, which is construed as a motion to amend the habeas petition. The motions are GRANTED. The Clerk of the Court shall serve a copy of the original and amended petitions for writ of habeas corpus corpus upon respondent and the Michigan Attorney General's Office by first class mail. Respondent shall file an answer and the Rule 5 materials within **sixty (60)** days of the Court's order. The Court amends the caption to reflect the name of Petitioner's current warden, Shane Jackson.

Federal courts have the power to order that a habeas petition be reinstated upon timely request by a habeas petitioner, following the exhaustion of state court remedies. *See e.g. Rodriguez v. Jones*, 625 F. Supp. 2d 552, 559 (E.D. Mich. 2009). Petitioner alleges in his amended petition that his claims were exhausted with the state courts. The case is reopened.

The Court also orders that the caption in this case be amended to reflect that the proper respondent in this case is now the warden of the prison where petitioner is currently incarcerated. *See Edwards Johns*, 450 F. Supp. 2d 755, 757 (E.D. Mich. 2006); *See also* Rule 2(a), 28 foll. U.S.C. § 2254.

The Court grants petitioner's motion to amend his habeas petition. There is no evidence of bad faith on Petitioner's part in bringing the motion to amend or prejudice to respondent if the motion is granted. *See Gillette v. Tansy*, 17 F.3d 308, 313 (10th Cir. 1994).

The Clerk of the Court shall serve a copy of the habeas petition [Dkt. # 1], a copy of the amended petition for writ of habeas corpus [Dkt. # 16], and a copy of this Order on Respondent and on the Attorney General for the State of Michigan by first class mail as provided in Rule 4 of the Rules Governing § 2254 Cases, Rule 4. *See Coffee v. Harry*, No. 04-71209, 2005 WL 1861943, * 2 (E.D. Mich. Aug. 2, 2005). Respondent shall file an answer within sixty days of the Court's order. *See Erwin v. Elo*, 130 F. Supp. 2d 887, 891 (E.D. Mich. 2001); 28 U.S.C. § 2243. Respondent shall provide the Rule 5 materials with the answer. *See Griffin v. Rogers*, 308 F.3d 647, 653 (6th Cir. 2002); Rules

Governing § 2254 Cases, Rule 5, 28 U.S.C. foll. § 2254. Petitioner has forty five days from the receipt of the answer to file a reply brief, if he so chooses. *See* Rule 5(e) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254.

ORDER

IT IS ORDERED THAT:

- (1) The motion to lift the stay of habeas corpus proceedings [Dkt. # 15] is **GRANTED**. The Clerk of the Court shall reopen the habeas petition to the Court's active docket.
- (2) The caption of the case is amended. Shane Jackson is now the respondent.
- (3) The motion to amend the petition for writ of habeas corpus is **GRANTED**.
- (4) The Clerk of the Court shall serve a copy of the petition for writ of habeas corpus [Dkt. # 1], a copy of the amended petition for writ of habeas corpus [Dkt. # 16], and a copy of this Order on Respondent and the Attorney General by first class mail.
- (5) Respondent shall file an answer and produce the Rule 5 materials within **sixty (60) days** of the date of this order or show cause why they are unable to comply with the order.
- (5) Petitioner shall have **forty five days** from the date that he receives the answer to file a reply brief.

s/Arthur J. Tarnow
HON. ARTHUR J. TARNOW
UNITED STATES DISTRICT COURT

DATED: June 16, 2017

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S Mail addresses disclosed on the Notice of Electronic filing on June 16, 2017.

s/Teresa McGovern
Case Manager Generalist